

**United States Department of Labor
Employees' Compensation Appeals Board**

C.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 08-1585
Issued: March 3, 2009**

Appearances:
Steve Burt, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 15, 2008 appellant filed a timely appeal from the November 9, 2007 and April 30, 2008 merit decisions of the Office of Workers' Compensation Programs, denying his claim for fact of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that he sustained a left knee injury on August 29, 2007 in the performance of duty, as alleged.

FACTUAL HISTORY

On August 3, 2004 appellant, then a 44-year-old city letter carrier, filed an occupational disease claim for a left knee injury which he attributed to 23 years of performing his assigned duties. The Office accepted the claim for aggravation of left knee chondromalacia under file number xxxxxx714. On January 26, 2004 appellant underwent a primary patellofemoral left knee arthroplasty. A second left knee surgery was performed on January 26, 2006. On

August 4, 2007 appellant was placed in a permanent rehabilitation job as a modified city mail carrier.

On September 24, 2007 appellant filed a traumatic injury claim (Form CA-1) alleging that while delivering mail on August 29, 2007 he turned to go down stairs and felt that something “gave way” in his left knee. He claimed that plates surgically inserted into his left knee after his August 3, 2003 claim came apart, requiring total knee replacement surgery. The employing establishment controverted appellant’s claim, contending that it was not notified on the date of injury.

Appellant was treated by Dr. Jeffrey D. Shapiro, a Board-certified orthopedic surgeon, who diagnosed failed left patellofemoral arthroplasty, based on x-rays indicating that appellant’s femoral component had become dislodged from his femur. On September 10, 2007 he performed a revision of the femoral and tibial components of appellant’s left total knee arthroplasty.

In an October 5, 2007 letter, the Office provided Dr. Shapiro with a statement of accepted facts and requested a medical opinion discussing the cause of appellant’s current left knee condition.

On October 24, 2007 appellant reported to Dr. Shapiro with considerable discomfort and a limited range of motion in his left knee. Dr. Shapiro diagnosed appellant with arthrofibrosis and ankylosis.

By decision dated November 9, 2007, the Office denied appellant’s claim, finding that he did not establish his medical condition was related to accepted work events. It noted that it was unclear whether the claimed injury was a consequential injury from appellant’s accepted left knee conditions or a new injury.

In a November 7, 2007 medical report, Dr. Shapiro responded to the Office’s request for information. He described appellant’s treatment for his prior left knee injury. Dr. Shapiro noted that on August 29, 2007 appellant was injured while walking down stairs during work and subsequently underwent surgical revision of patellofemoral arthroplasty and total knee arthroplasty on September 10, 2007 to correct his displaced femoral component. He advised that appellant was currently in physical therapy for joint arthrofibrosis and ankylosis due to immobility of his joint following the injury and surgical procedure. Dr. Shapiro opined that both the failed prosthetic implant and subsequent ankylosis of the joint were directly related to the accepted employment injury.

On November 27, 2007 Dr. Shapiro detailed appellant’s treatment for his accepted 2003 injury. He opined that appellant sustained a failed patellofemoral arthroplasty after twisting his knee at work on August 29, 2007, which he described as a new injury. Dr. Shapiro then attributed the failure of appellant’s patellofemoral component to “the failure of the component necessitating the need for total knee arthroplasty.”

On November 19, 2007 appellant requested a telephonic hearing before a hearing representative, which took place on February 11, 2008. He testified that he pivoted on his left knee while going down stairs at work on August 29, 2007. Appellant initially attributed the left

knee pain to arthritis from past surgeries, however, as the pain continued into the weekend, he eventually went to the emergency room for medical treatment.

Appellant submitted emergency room records dated September 2, 2007, which diagnosed a displaced left knee prosthesis. In a February 27, 2008 report, Dr. Shapiro stated that on August 29, 2007, while at work, appellant twisted his knee and later presented with component failure. Dr. Shapiro noted that the component failure required total knee arthroplasty and that complications ensued following the surgery were “all as a direct result of this sequence of events.”

In a statement dated March 19, 2008, appellant contended that he injured his knee on August 29, 2007. He reported for work the next day, despite limping, after which he was off for the Labor Day holiday weekend. Appellant took off work on Tuesday, September 4, 2007.

By decision dated April 30, 2008, the hearing representative affirmed the November 9, 2007 Office decision, as modified to find that appellant did not establish that he sustained an injury at the time, place, or in the manner alleged.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he is an “employee” within the meaning of the Act³ and that he filed his claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁶ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁷ Such circumstances as late notification of injury, lack of confirmation of

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *M.H.*, *supra* note 3; *George W. Glavis*, 5 ECAB 363, 365 (1953).

⁷ *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁸ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹

ANALYSIS

The issue is whether appellant established that he sustained a left knee injury on August 29, 2007 in the performance of duty. By decision dated November 9, 2007, the Office accepted that the August 29, 2007 incident occurred as alleged, but found that the medical evidence did not support that he sustained an employment-related injury. However, in the April 30, 2008 decision, an Office hearing representative modified the decision to find that the August 29, 2007 incident was not accepted. The Board does not find such inconsistencies as determined by the hearing representative and accepts the August 29, 2007 incident occurred as alleged.

Appellant claimed that he was injured on August 29, 2007 after turning to go down stairs while delivering mail. He testified during a telephonic hearing that he initially believed his left knee pain was related to his previous surgeries. However, during Labor Day weekend, he continued to experience pain and eventually went to the emergency room. Appellant sought medical treatment from Dr. Shapiro beginning September 5, 2007 for his left knee. Appellant only worked one shift after the incident, during which he noted that he was limping, prior to stopping work on September 5, 2007. He submitted a traumatic injury claim on September 5, 2007, which was later rescinded due to the fact that he mistakenly indicated that he was injured in August 2003, and subsequently refiled the claim on September 24, 2007.

The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and his subsequent course of action. Here, appellant only worked one shift, with difficulty, after the August 29, 2007 incident. Emergency room medical records dated September 2, 2007 support appellant's claim that he timely sought medical treatment. Additionally, appellant attempted to file a claim only a few days after the incident, which does not constitute a significant delay.

Further, appellant's claim is generally supported by Dr. Shapiro's medical reports. The Board notes that Dr. Shapiro initially reported that appellant injured his knee over the Labor Day weekend. However, this inconsistency is not so great as to cast doubt onto the validity of appellant's claim. The misstatement was a reasonable mistake in light of the fact that appellant was treated in the emergency room over the weekend. Further, Dr. Shapiro addressed appellant's work incident in subsequent medical reports, including those dated November 11 and 27, 2007 and February 2, 2008.

⁸ *M.H., supra* note 3; *John D. Shreve*, 6 ECAB 718, 719 (1954).

⁹ *S.P., supra* note 7; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

A claimant's relation of an employment incident carries great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰ The record does not contain such inconsistencies, as cited by the hearing representative, as to refute appellant's claim.

The Board further finds that appellant established that he sustained a left knee injury due to the August 29, 2007 accepted incident.

In a medical report dated November 7, 2007, Dr. Shapiro stated that appellant was injured while walking down stairs at work on August 29, 2007. He reported that on September 10, 2007 he performed a surgical revision of a past patellofemoral and total knee arthroplasty to correct a femoral component displaced during the work incident. Dr. Shapiro followed up with a November 27, 2007 medical report, where he detailed appellant's treatment history. He opined that appellant twisted his knee on August 29, 2007, resulting in the dislodging of the femoral component from the femur, requiring total knee arthroplasty. Additionally, in a February 27, 2008 medical note, Dr. Shapiro reiterated that appellant twisted his knee at work on August 29, 2007, resulting in component failure and requiring total knee arthroplasty. He opined that the procedure and all ensuing complications were a direct result of this sequence of events.

Dr. Shapiro consistently reported, with rationalized medical opinion, that appellant twisted his knee while walking down stairs in the performance of duty, resulting in a displaced femoral component requiring surgery.¹¹ His opinion is uncontroverted by other medical evidence and is sufficient to establish that appellant's left knee condition and need for surgery were a result of the accepted August 29, 2007 employment incident. The Board finds that appellant sustained an injury in the performance of duty on that date.

CONCLUSION

The Board finds that appellant established that he sustained a left knee injury on August 29, 2007 in the performance of duty.

¹⁰ *S.P., supra* note 7.

¹¹ The Board notes that in a September 5, 2007 medical note Dr. Shapiro indicated that appellant was injured over Labor Day weekend. This inconsistency is of little relevance, as discussed above.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2008 and November 9, 2007 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: March 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board